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HABEAS CORPUS JURISDICTION OF FEDERAL AND STATE COURTS.

General Statement.

It is a settled doctrine, that a court of competent jurisdiction having possession of a person cannot be deprived of the right to deal with such person by habeas corpus, until its jurisdiction is exhausted, and that no court of another and independent sovereignty has the right to interfere with such custody. In re Johnson, 167 U. S. 120, 125, 42 L. Ed. 103; Andrews *v.* Swartz, 156 U. S. 272, 276, 39 L. Ed. 422; Ex parte Siebold, 100 U. S. 371, 375, 25 L. Ed. 717; In re Wood, 140 U. S. 278, 290, 35 L. Ed. 505; Pepke *v.* Cronan, 155 U. S. 100, 39 L. Ed. 84.

There are within the territorial limits of each State two governments, restricted in their spheres of action, but independent of each other, and supreme within their respective spheres. Each has its separate departments; each has its distinct laws, and each has its own tribunals for their enforcement. Neither government can intrude within the jurisdiction, or authorize any interference therein by its judicial officers with the action of the other. The two governments in each State stand in their respective spheres of action in the same independent relation to each other, except in one particular, that they would if their authority embraced distinct territories. That particular consists in the supremacy of the authority of the United States when any conflict arises between the two governments. Tarble's Case, 13 Wall. 397, 406, 20 L. Ed. 597.

"Neither is supreme, in the sense that it has power to dictate to or control the other, when acting in its appropriate sphere. Each is supreme within its own sphere. Neither is supreme within the sphere of the other. A common constituency supports, upholds and gives vitality to both. * * * Each has

its writ of habeas corpus. Each has power under its constitution to suspend the writ on the happening of a certain contingency. The object of the writ is the same in both governments. It is to release from imprisonment within its judicial limits, persons entitled to its protection who are deprived of their liberty without warrant of law. The territory of the State is common to both governments. The territorial jurisdiction of both governments, therefore, so far as it respects the State, is the same. But is the judicial jurisdiction incident to the writ of habeas corpus the same? We think not. Otherwise the powers of the Federal and State courts, as it regards this writ, are identical; and if they have a common concurrent jurisdiction, the power given to either government by its constitution, to suspend the writ, for all practical purposes is a nullity, as neither can suspend the writ of the other, and as the only effect of a suspension by one, would be the same as that of abolishing the jurisdiction of one of two writs having a common concurrent jurisdiction, viz, to drive the suitors of both courts into the one whose jurisdiction was left unimpaired. Besides, if both governments have a common jurisdiction in the use of this writ, we have two independent governments, neither responsible to the other, acting upon the same subject matter. One may imprison, and the other release from such imprisonment, for the former to renew the imprisonment, and the latter again set free, until the stronger overpowers the weaker. Any construction of the Federal Constitution that leads to such results must necessarily be erroneous. We cannot suppose the people, in adopting the Federal Constitution, intended to make such a distribution of the sovereign power delegated by them as to place one part of it in antagonism to another. There must, therefore, from the very nature of our institutions, be a line separating the powers of the two governments, on this as well as on every other subject. The question then arises, where is that line, and what constitutes it? There can be but one. And that appears so clear to my mind (it may appear differently to others) that I almost wonder how any other should ever have been thought of. It is this: that the State courts have the right, and it is their duty, in all cases authorized by the laws of the State, to issue the writ of habeas corpus to inquire into the legality of the imprison-

ment of any person deprived of his liberty within the State, and to discharge him therefrom if wrongfully imprisoned, unless he is imprisoned or restrained of his liberty by the Federal Government. By this I mean, not by one acting in his own right, but by one acting for and in right of and under authority from the Federal Government, or claiming in good faith and under color of such authority to be so acting. I use these last words for the reason that good faith and color of authority are necessary to prevent imposition, and to oust the State jurisdiction. These being judicially ascertained, the State court can go no further. It can not inquire into the validity of the authority, or the legality of the detention under it, for this would be taking jurisdiction of the whole question." In re Spangler, 11 Mich. 298, Manning, Jr., concurring.

On habeas corpus, the state courts have concurrent jurisdiction with the federal courts of all cases of imprisonment within their territorial jurisdiction, except in the case where the petitioner is in custody under the authority, or claim or color of authority, of the United States. Robb *v.* Connolly, 111 U. S. 624, 633, 28 L. Ed. 542.

When the prisoner is within the dominion and jurisdiction of the United States government, the writ of habeas corpus, issued under state authority, cannot pass over the line of division between the two sovereignties. He is then within the dominion and exclusive jurisdiction of the United States. If he is wrongfully imprisoned, their judicial tribunals can release him and afford him redress. Ableman *v.* Booth, 21 How. 506, 523, 16 L. Ed. 169.

That the courts and judges of the several states cannot, under any authority conferred by the states, discharge from custody persons held by authority of the courts of the United States, or of commissioners of such courts, or by officers of the general government acting under its law, results from the supremacy of the constitution and laws of the United States. Ex parte Royall, No. 1, 117 U. S. 241, 249, 29 L. Ed. 868.

This limitation upon the power of state tribunals and state officers furnishes no just ground to apprehend that the liberty of the citizen will thereby be endangered. The United States

are as much interested in protecting the citizen from illegal restraint under their authority, as the several states are to protect him from the like restraint under their authority, and are no more likely to tolerate any oppression. Certainly there can be no ground for supposing that their action will be less prompt and efficient in such cases than would be that of state tribunals and state officers. Tarble's Case, 13 Wall. 397, 411, 20 L. Ed. 597.

WHERE WRIT ISSUES FROM STATE COURT.

No state can authorize one of its judges or courts to exercise judicial power, by habeas corpus, within the jurisdiction of another and independent government. Tarble's Case, 13 Wall. 397, 405, 20 L. Ed. 597; Ableman *v.* Booth, 21 How. 506, 516, 16 L. Ed. 169. The state court may issue the writ in any case of imprisonment within the territorial limits of such state to inquire for what cause and by what authority it is exercised, directed to the person exercising such authority, although such person is a federal officer and acting under federal authority. Ableman *v.* Booth, 21 How. 506, 514, 523, 16 L. Ed. 169; Robb *v.* Connolly, 111 U. S. 624, 631, 28 L. Ed. 542.

When the writ is served upon him it becomes the duty of the marshal, or other person having the custody of the prisoner, to make known to the judge or court, by a proper return, the authority by which he holds him, in custody. While such federal officer has imposed upon him this duty to make known his authority to the state court, yet he is at the same time to obey and execute the process of the federal courts. It is at the same time imperatively his duty to obey the process of the United States, to hold the prisoner in custody under it, and to refuse obedience to the mandate or process of any other government. Ableman *v.* Booth, 21 How. 506, 523, 16 L. Ed. 169; Robb *v.* Connolly, 111 U. S. 624, 632, 28 L. Ed. 542; United States *v.* Reese, 92 U. S. 214, 255, 23 L. Ed. 563. If the prisoner is held in custody only under color of authority derived from the constitution and laws of the United States, and is entitled to invoke the judgment of the judicial tribunals, whether of the state or of the United States, by the writ of habeas corpus, upon the lawfulness of his arrest and imprisonment, the jurisdiction of the courts of the states

is not excluded, as was adjudged by the federal supreme court in the case of Robb *v.* Connolly, 111 U. S. 624, 28 L. Ed. 542, for, although the party is restrained of his liberty under color of authority derived from the laws of the United States, he is not in the custody of, or under restraint by, an officer of the United States. Roberts *v.* Reilly, 116 U. S. 80, 94, 29 L. Ed. 544.

Prisoner Held under Federal Authority.—But, if it appears either upon the application for the writ or upon the return thereto that the custody is by virtue "of the authority of the United States," the state court can proceed no further. No state judge or court, after they are judicially informed that the party is imprisoned under the authority of the United States, has any right to interfere with him, or to aquire him to be brought before them. Robb *v.* Connolly, 11. U. S. 624, 632, 28 L. Ed. 542; Ableman *v.* Booth, 21 How. 506, 514, 16 L. Ed. 169. If such fact appear upon the application, the writ should be refused. If it do not appear, the judge or court issuing the writ has a right to inquire into the cause of imprisonment, and ascertain by what authority the person is held within the limits of the state; and it is the duty of the marshal, or other officer having the custody of the prisoner, to give, by a proper return, information in this respect. His return should be sufficient, in its detail of facts, to show distinctly that the imprisonment is under the authority, or claim and color of the authority, of the United States, and to exclude the suspicion of imposition or oppression on his part. And the process or orders, under which the prisoner is held, should be produced with the return and submitted to inspection, in order that the court or the judge issuing the writ may see that the prisoner is held by the officer, in good faith, under the authority, or claim and color of the authority, of the United States, and not under the mere pretense of having such authority. Tarble's Case, 13 Wall. 397, 409, 20 L. Ed. 597.

This right to inquire by process of habeas corpus, and the duty of the officer to make a return, "grows necessarily," says Mr. Chief Justice Taney in Ableman *v.* Booth, 21 How. 506, "out of the complex character of our government and the ex-

istence of two distinct and separate sovereignties within the same territorial space, each of them restricted in its power, and each within its sphere of action, prescribed by the Constitution of the United States, independent of the other. But, after the return is made, and the State judge or court judicially apprised that the party is in custody under the authority of the United States, they can proceed no further. They then know that the prisoner is within the dominion and jurisdiction of another government, and that neither the writ of habeas corpus nor any other process issued under State authority can pass over the line of division between the two sovereignties. He is then within the dominion and exclusive jurisdiction of the United States. If he has committed an offence against their laws, their tribunals alone can punish him. If he is wrongfully imprisoned, their judicial tribunals can release him and afford him redress." Tarble's Case, 13 Wall. 397, 410, 20 L. Ed. 597.

Before the supreme court of the United States had adjudicated this question in the cases of Ex parte Pool, 2 Va. Cas. 276; United States *v.* Cottingham, 1 Rob. 615; United States *v.* Blakeney, 3 Gratt. 405; United States *v.* Liscomb, 4 Gratt. 41, the writ of habeas corpus was issued and the party discharged in contravention of this doctrine. See Minor's Institutes, vol. 4, part 1, p. 506.

What Constitutes Federal Authority.—By federal authority is not meant undisputed lawful authority of the United States, as distinguished from claim or color of such authority. Some attempt has been made in adjudications, to limit the decision in Ableman *v.* Booth, 21 How. 506, 16 L. Ed. 169, to cases where a prisoner is held in custody under undisputed lawful authority of the United States, as distinguished from his imprisonment under claim and color of such authority. But it is evident that the decision does not admit of any such limitation. All that is meant by the language used is, that the state judge or state court should proceed no further when it appears, from the application of the party, or the return made, that the prisoner is held by an officer of the United States under what, in truth, purports to be the authority of the United States; that is, an authority, the validity of which is to be de-

termined by the constitution and laws of the United States. If a party thus held be illegally imprisoned it is for the courts or judicial officers of the United States, and those courts or officers alone, to grant him release. Tarble's Case, 13 Wall. 397, 411, 20 L. Ed. 597. Questions of this kind must always depend upon the constitution and laws of the United States, and not of a state. Ableman *v.* Booth, 21 How. 506, 516, 16 L. Ed. 169.

A person is in custody under federal authority, and beyond the scope of state jurisdiction, when he is in the custody of a United States court, of a commissioner of such court or of an officer of the United States government acting under its laws. Ex parte Royall, No. 1, 117 U. S. 241, 249, 29 L. Ed. 868. No judicial officer of a state has jurisdiction to issue a writ of habeas corpus, or to continue proceedings under the writ when issued, for the discharge of a person held under the authority, or claim and color of the authority, of the United States, by an officer of that government. In this regard there is no distinction between a federal officer and a federal tribunal. These principles were applied to a case where a habeas corpus was issued by a court commissioner of one of the counties of Wisconsin to a recruiting officer of the United States, to bring before him a person who had enlisted as a soldier in the army of the United States, and whose discharge was sought on the alleged ground that he was a minor under the age of eighteen years at the time of his enlistment, and that he enlisted without the consent of his father. The petition for the writ alleging that the prisoner had enlisted as a soldier and been mustered into the military service of the national government, and was detained by the officer as such soldier, the federal supreme court held that the court commissioner had no jurisdiction to issue the writ for the discharge of the prisoner, as it thus appeared upon the petition that the prisoner was detained under claim and color of the authority of the United States by an officer of that government; and that if he was illegally detained, it was for the courts or judicial officers of the United States and for those courts or officers alone to grant him release. Tarble's Case, 13 Wall. 397, 20 L. Ed. 597.

WHERE WRIT ISSUES FROM UNITED STATES COURT.

Power to Issue Writ.—The writ can be issued by a United States court to release prisoner from the custody of a state court, only in cases provided for by statute. The extent of the right of the federal courts to interfere by writ of habeas corpus with the proceedings of courts and other authorities of a state is carefully defined by statute. Rogers *v.* Peck, 199 U. S. 425, 433, 50 L. Ed. 256. The prosecution and punishment of crimes and offenses committed against one of the states of the Union appropriately belong to the courts and authorities of the state, and can be interfered with by the circuit court of the United States so far only as congress, in order to maintain the supremacy of the constitution and laws of the United States, has expressly authorized either a removal of the prosecution into the circuit court of the United States for trial, or a discharge of the prisoner by writ of habeas corpus issued by that court or by a judge thereof. Virginia *v.* Paul, 148 U. S. 107, 114, 37 L. Ed. 386.

Under the original judiciary act, the only case in which the writ could so issue was to bring the prisoner before the United States court to be used as a witness; but, by subsequent legislation, the federal jurisdiction has been extended, so that the writ may issue to discharge person who is in state custody, in violation of the constitution or a law or a treaty of the United States; for an act done or omitted in pursuance of any law of the United States, or any order, process or decrees of any judge or court thereof; and where the person in custody is the subject of a foreign state, and domiciled therein, and is in custody for an act done or omitted under the order, etc., of a foreign state, the validity and effect whereof depend upon the law of nations. In re Burrus, 136 U. S. 586, 34 L. Ed. 500; In re Dorr, 3 How. 103, 11 L. Ed. 514; Whitten *v.* Tomlinson, 160 U. S. 231, 239, 40 L. Ed. 406. While it might appear unseemly that a prisoner, after conviction in a state court, should be set at liberty by a single judge on habeas corpus, there was no escape from the act of 1867, which invested such judge with power to discharge when the prisoner was restrained of his liberty in violation of a law of the United

States. Ex parte Royall, No. 1, 117 U. S. 241, 253, 29 L. Ed. 868. Undoubtedly, the courts of the United States have the power, under existing legislation, by writ of habeas corpus to discharge from custody any person held by state authorities under criminal proceedings instituted under state enactments, if such enactments are void for repugnancy to the constitution, laws or treaties of the United States. Fitts *v.* McGhee, 172 U. S. 516, 532, 43 L. Ed. 535.

The courts of Virginia having no jurisdiction of a complaint for perjury in testifying before a notary of the state upon a contested election of a member of congress on which the prisoner was arrested, and he being in custody, in violation of the constitution and laws of the United States, for an act done in pursuance of those laws by testifying in the case of a contested election of a member of congress, law and justice required that he should be discharged from such custody, and he was rightly so discharged by the circuit court on writ of habeas corpus. Ex parte Royall, No. 1, 117 U. S. 241, 29 L. Ed. 868.

The federal courts have no power to discharge a person in custody of a state court of competent jurisdiction, simply because such court has committed an error. If the state court had jurisdiction of the offense and person, a mere error committed in rendering sentences does not justify federal interference. Andrews *v.* Swartz, 156 U. S. 272, 39 L. Ed. 422; New York *v.* Eno, 155 U. S. 89, 98, 39 L. Ed. 80; Bergemann *v.* Backer, 157 U. S. 655, 659, 39 L. Ed. 845.

It is elementary learning that, if a prisoner is in the custody of a state court of competent jurisdiction, not illegally asserted, he cannot be taken from that jurisdiction and discharged on habeas corpus issued by a court of the United States, simply because he is not guilty of the offense for which he is held. Ex parte Crouch, 112 U. S. 178, 180, 28 L. Ed. 690. The inquiry under this writ is distinct from the question whether the prisoner shall be convicted or acquitted; but it would seem that the supreme court, in at least one case, did not restrain itself to this rule of law. In the case of In re Neagle, 135 U. S. 1, 34 L. Ed. 55, a marshal of the United States who had killed a person in defending a justice of the supreme court was, on

habeas corpus, discharged and delivered from any trial or further inquiry in any court. See dissenting opinion of Lamar, J., and Fuller, C. J., in In re Neagle, 135 U. S. 1, 76, 34 L. Ed. 55, quoting Ex parte Crouch, 112 U. S. 178, 180, 28 L. Ed. 690.

Where a prisoner in state custody had previously been admitted to bail in a federal court, the federal court has power to take him from state authority by habeas corpus. Taylor *v.* Taintor, 16 Wall. 366, 21 L. Ed. 287.

Discretion to Issue Writ.—Although the different courts of the United States, and the several justices and judges thereof, have authority, under existing statutes, to discharge, upon habeas corpus, one held in custody by state authority in violation of the constitution or of any treaty or law of the United States, they are not imperatively required to do so in every case; but may exercise a discretion whether they will discharge the prisoner in advance of his trial and conviction in the state court, or compel the prisoner by the usual method of error or appeal, after exhausting such remedies as the state gives to test the constitutionality of his detention. Urquhart *v.* Brown, 205 U. S. 179, 181, 51 L. Ed. 760; United States *v.* Lewis, 200 U. S. 1, 8, 50 L. Ed. 343; New York *v.* Eno, 155 U. S. 89, 39 L. Ed. 80; Riggins *v.* United States, 199 U. S. 547, 549, 50 L. Ed. 303; Ex parte Royall, No. 1, 117 U. S. 241, 251, 254, 29 L. Ed. 868.

In New York *v.* Eno, 155 U. S. 89, 39 L. Ed. 80, it was held that the statute did not imperatively require the circuit court by that writ to wrest the petitioner from the custody of the state officers in advance of his trial in the state court; and that while the circuit court had the power to do so, and could discharge the accused in advance of his trial, if restrained in violation of the constitution, it was not bound in every case to exercise such power immediately upon application being made for the writ. It was not intended by congress that the federal courts should by writs of habeas corpus obstruct the ordinary administration of the criminal laws of the states, through their own tribunals. In re Wood, 140 U. S. 278, 289, 35 L. Ed. 505. While the writ of habeas corpus is one of the remedies for the enforcement of the right to personal freedom, it will not issue, as

a matter of course, and it should be cautiously used by the federal courts in reference to state prisoners. In re Frederich, 149 U. S. 70, 75, 37 L. Ed. 653. In the exercise of the authority given the federal courts to discharge a prisoner in state custody in violation of the constitution, they are not bound to discharge every such prisoner. Whitten *v.* Tomlinson, 160 U. S. 231, 240, 40 L. Ed. 406. It is not now the law and never was, that every person held in unlawful imprisonment has a right to invoke the aid of the courts of the United States for his release by the writ of habeas corpus. In re Burrus, 136 U. S. 586, 591, 34 L. Ed. 500. The federal courts may in their discretion delay issuance of the writ to release a prisoner held by a state in violation of the Constitution. Ex parte Watkins, 3 Pet. 193, 201, 7 L. Ed. 650.

The ordinary procedure for the correction of errors in criminal cases is by writ of error, and that method should be pursued unless there be special circumstances calling for a departure therefrom. In re Lincoln, 202 U. S. 178, 182, 50 L. Ed. 984; Riggins *v.* United States, 199 U. S. 547, 50 L. Ed. 303; Whitney *v.* Dick, 202 U. S. 132, 140, 50 L. Ed. 963; Reid *v.* Jones, 187 U. S. 153, 154, 47 L. Ed. 116; In re Duncan, 139 U. S. 449, 35 L. Ed. 219. "Unless this case be of such an exceptional nature, we ought not to encourage the interference of the federal court below with the regular course of justice in the state court." Baker *v.* Grice, 169 U. S. 284, 291, 42 L. Ed. 748; Cook *v.* Hart, 146 U. S. 183, 195, 36 L. Ed. 934; Storti *v.* Massachusetts, 183 U. S. 138, 141, 46 L. Ed. 120. The power to arrest the due and orderly proceedings of the state courts, or to discharge a prisoner after conviction, before an application has been made to the supreme court of the state for relief, is one which should be sparingly exercised, and should be confined to cases where the facts imperatively demand it. Davis *v.* Burke, 179 U. S. 399, 402, 45 L. Ed. 249. The reluctance with which the supreme court will sanction federal interference with a state in the administration of its domestic law for the prosecution of crimes has been frequently stated in the deliverances of the court upon the subject. It is only where fundamental rights, specially secured by the federal con-

stitution, are invaded, that such interference is warranted. Rogers *v.* Peck, 199 U. S. 425, 434, 50 L. Ed. 256. See, also, Boske *v.* Comingore, 177 U. S. 459, 44 L. Ed. 846.

The same rule applies where in addition to the petitions presented to the circuit court of the United States, an original application is made to the federal supreme court for a writ of habeas corpus based upon the same facts as those set forth in the other petitions. New York *v.* Eno, 155 U. S. 89, 95, 39 L. Ed. 80; Ex parte Royall, No. 1, 117 U. S. 241, 254, 29 L. Ed. 868.

The petitioner who was held under state process for trial on an indictment charging an offense against the laws of the state, filed his petition in habeas corpus in the circuit court of the United States praying release from that custody. The circuit court refused to order his discharge, and from its ruling he appealed, and at the same time filed an original petition in this court. The question was fully considered and it was held that while the federal courts, circuit and supreme, had jurisdiction in the premises, there was a discretion whether the writ should be issued. The court said: "Where a person is in custody, under process from a state court of original jurisdiction, for an alleged offense against the laws of such state, and it is claimed that he is restrained of his liberty in violation of the constitution of the United States, the circuit court has a discretion, whether it will discharge him, upon habeas corpus, in advance of his trial in the court in which he is indicted; that discretion, however, to be subordinated to any special circumstances requiring immediate action. When the state court shall have finally acted upon the case, the circuit court has still a discretion whether, under all the circumstances then existing, the accused, if convicted, shall be put to his writ of error from the highest court of the state, or whether it will proceed by writ of habeas corpus, summarily to determine whether the petitioner is restrained of his liberty in violation of the constitution of the United States." Ex parte Royall, No. 1, 117 U. S. 241, 251, 253, 29 L. Ed. 868.

This discretion should be exercised in the light of the relation existing, under our system of government, between the

judicial tribunals of the Union and of the states, and in recognition of the fact that the public good requires that those relations be not disturbed by unnecessary conflict between courts equally bound to guard and protect rights secured by the constitution. Ex parte Royall, No. 1, 117 U. S. 241, 251, 29 L. Ed. 868.

When Writ Will Be Denied.—The general rule, in the absence of circumstances requiring immediate action, is, that the courts and judges or justices of the United States will not interfere by habeas corpus with the custody by state authorities of one claimed to be held in violation of the constitution or laws of the United States until after final action by the state courts in the case in which such custody exists, but that they will deny such applications without prejudice to a renewal of the same after the accused had availed himself of such remedies as the laws of the state afforded for a review of the judgment in the state court of which he complains. Ex parte Royall, No. 1, 117 U. S. 241, 251, 29 L. Ed. 868; Boske *v.* Comingore, 177 U. S. 459, 466, 44 L. Ed. 846; New York *v.* Eno, 155 U. S. 89, 39 L. Ed. 80; Whitten *v.* Tomlinson, 160 U. S. 231, 242, 40 L. Ed. 406; Markuson *v.* Boucher, 175 U. S. 184, 44 L. Ed. 124; Urquhart *v.* Brown, 205 U. S. 179, 183, 51 L. Ed. 760. See Reid *v.* Jones, 187 U. S. 153, 154, 47 L. Ed. 116; United States *v.* Sing Tuck, 194 U. S. 161, 168, 48 L. Ed. 917; Baker *v.* Grice, 169 U. S. 284, 290, 42 L. Ed. 748; Minnesota *v.* Brundage, 180 U. S. 499, 502, 45 L. Ed. 639; Rogers *v.* Peck, 199 U. S. 425, 434, 50 L. Ed. 256; In re Jugiro, 140 U. S. 291, 35 L. Ed. 510; In re Wood, 140 U. S. 278, 35 L. Ed. 505; Andrews *v.* Swartz, 156 U. S. 272, 39 L. Ed. 422; In re Duncan, 139 U. S. 449, 454, 35 L. Ed. 219; Ex parte Fonda, 117 U. S. 516, 29 L. Ed. 994.

This rule grows out of the relations existing under our system of government, between the judicial tribunals of the United States and of the several states, under which it is incumbent upon the state courts, equally with the courts of the Union, to enforce and protect every right granted or secured by the constitution of the United States, and the laws made in pursuance thereof, whenever those rights are involved in any

suit or proceeding before them. As a general rule because of the relations existing, under our system of government, between the judicial tribunals of the Union and of the several states, a federal court or a federal judge will not ordinarily interfere by habeas corpus with the regular course of procedure under state authority, but will leave the applicant for the writ of habeas corpus to exhaust the remedies afforded by the state of determining whether he is illegally restrained of his liberty. Urquhart *v.* Brown, 205 U. S. 179, 181, 51 L. Ed. 760. To adopt a different rule would unduly interfere with the exercise of the criminal jurisdiction of the several states, and with the performance by this court of its appropriate duties. Whitten *v.* Tomlinson, 160 U. S. 231, 247, 40 L. Ed. 406. The reason for this course is apparent. It is an exceedingly delicate jurisdiction given to the federal courts by which a person under an indictment in a state court and subject to its laws may, by the decision of a single judge of the federal court, upon a writ of habeas corpus, be taken out of the custody of the officers of the state and finally discharged therefrom, and thus a trial by the state courts of an indictment found under the laws of a state be finally prevented. Baker *v.* Grice, 169 U. S. 284, 291, 42 L. Ed. 748.

The state courts are as much bound as the federal courts to see that no man is punished in violation of the constitution or laws of the United States; and ordinarily an error in this particular can better be corrected by the supreme court upon a writ of error to the highest court of the state than by an interference, which is never less than unpleasant, with the procedure of the state courts before the petitioner has exhausted his remedy there. Davis *v.* Burke, 179 U. S. 399, 402, 45 L. Ed. 249. The state courts are competent to determine constitutional questions and are under a duty to enforce the mandates of the supreme law of the land. Robb *v.* Connolly, 111 U. S. 624, 637, 28 L. Ed. 542; New York *v.* Eno, 155 U. S. 89, 94, 39 L. Ed. 80; Ex parte Royall, No. 1, 117 U. S. 241, 248, 251, 29 L. Ed. 868; Cook *v.* Hart, 146 U. S. 183, 36 L. Ed. 934. A federal court should not discharge the petitioner until the state court had finally acted upon the case, when it could be

determined whether the accused, if convicted, should be put to his writ of error or the question determined on habeas corpus whether he was restrained of his liberty in violation of the constitution of the United States. Riggins *v.* United States, 199 U. S. 547, 549, 50 L. Ed. 303.

It is presumed, the state courts will perform their duty to enforce and protect every right granted or secured by the constitution of the United States and the laws made in pursuance thereof. The federal courts are not at liberty to presume that the decision of the state court will be otherwise than as is required by the fundamental law of the land, or that the state court will disregard the settled principles of constitutional law announced by the supreme court, upon which is clearly conferred the power to decide ultimately and finally all cases arising under the constitution and laws of the United States. New York *v.* Eno, 155 U. S. 89, 94, 39 L. Ed. 80; Ex parte Royall, No. 1, 117 U. S. 241, 251, 29 L. Ed. 868; Robb *v.* Connolly, 111 U. S. 624, 28 L. Ed. 542. It can not be assumed that the state court will hesitate to enforce any rights secured by that instrument. Minnesota *v.* Brundage, 180 U. S. 499, 503, 45 L. Ed. 639.

Another reason for the denial of the writ in the federal courts in the first instance is, that, if the question is determined adversely to the defendants in the highest court of the state in which the decision could be had, the judgment may be re-examined by the federal supreme court upon writ of error Fitts *v.* McGhee, 172 U. S. 516, 532, 43 L. Ed. 535.

This discretion to interfere, on habeas corpus, for the protection of one alleged to be restrained of his liberty in violation of the constitution or laws of the United States, must often be controlled by the special circumstances of the case. Robb *v.* Connolly, 111 U. S. 624, 637, 28 L. Ed. 542; Pettibone *v.* Nichols, 203 U. S. 192, 201, 51 L. Ed. 148. A prisoner in custody under the authority of a state should not, except in a case of peculiar urgency, be discharged by a court or judge of the United States upon a writ of habeas corpus, in advance of any proceedings in the courts of the state to test the validity of his arrest and detention. Whitten *v.* Tomlinson, 160 U. S. 231, 247, 40 L. Ed. 406.

The jurisdiction is more delicate, the reason against its exercise stronger, when a single judge is invoked to reverse the decision of the highest court of a state in which the constitutional rights of a prisoner could have been claimed and maybe were rightly decided, or if not rightly decided, could be reviewed and redressed by a writ of error from this court. Markuson *v.* Boucher, 175 U. S. 184, 187, 44 L. Ed. 124.

When Writ Will Be Granted.—There are recognized exceptions to the rule, as stated above, in which this discretion should be subordinated to special circumstances requiring immediate action. The exceptional cases, in which a federal court or judge may sometimes appropriately interfere by habeas corpus in advance of final action by the authorities of the state, are those of great urgency that require to be promptly disposed of; such, for instance, as where the prisoner is in custody, by authority of a state, for an act done or omitted to be done in pursuance of a law of the United States, or of an order or process of a court of the United States, or otherwise involving the authority and operations of the general government; or where such person is a citizen or subject of a foreign state and is in custody for an act done under the authority of his own government; or to bring a person in state custody into a federal court to give testimony; but not, as a rule, where the prisoner claims to be in custody without due process of law, where such custody is voluntary; under erroneous sentence; or that a statute, under which prisoner is in custody, affects the general public interest. Whitten *v.* Tomlinson, 160 U. S. 231, 241, 40 L. Ed. 406; In re Neagle, 135 U. S. 1, 34 L. Ed. 55; Ex parte Royall, No. 1, 117 U. S. 241, 251, 253, 29 L. Ed. 868; New York *v.* Eno, 155 U. S. 89, 93, 95, 39 L. Ed. 80; Baker *v.* Grice, 169 U. S. 284, 42 L. Ed. 748; Ex parte Siebold, 100 U. S. 371, 394, 25 L. Ed. 717; In re Loney, 134 U. S. 372, 33 L. Ed. 949; Ohio *v.* Thomas, 173 U. S. 276, 43 L. Ed. 699.

A case of urgency arose in where the appellee was an officer in the revenue service of the United States whose presence at his post of duty was important to the public interests, and whose detention in prison by the state authorities might have interfered with the regular and orderly course of the business

of the department to which he belonged. The district court, therefore, did not err in determining the question of constitutional law raised by the application for a writ of habeas corpus, and rendering final judgment. Boske *v.* Comingore, 177 U. S. 459, 466, 44 L. Ed. 846. A governor of a soldiers' home providing for and feeding the inmates pursuant to an act of congress is engaged in the performance of a federal duty, and not subject to the jurisdiction of state courts. This is one of the exceptional cases in which it is proper for a federal court to issue the writ of habeas corpus to relieve such person from the custody of a state court, which had imprisoned him for violating a state law in regard to the sale of oleomargarine. Ohio *v.* Thomas, 173 U. S. 276, 284, 43 L. Ed. 699.

When the petitioner in custody by state authority is a subject or citizen of a foreign state, and domiciled therein, for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, or order, or sanction of any foreign state, or under color thereof, the validity and effect whereof depend upon the law of nations; in such and like cases of urgency, involving the obligations of this country to, or its relations with, foreign nations, the courts of the United States have frequently interposed by writs of habeas corpus and discharged prisoners who were held in custody under state authority. New York *v.* Eno, 155 U. S. 89, 94, 39 L. Ed. 80.

It may sometimes be necessary and proper for a federal court to issue the writ to bring a witness before it to testify out of the custody of a state court. Minnesota *v.* Brundage, 180 U. S. 499, 500, 45 L. Ed. 639. The petitioner was duly summoned to give his deposition in a contested election case pending in the house of representatives of the congress of the United States—a summons he was obliged to obey, unless prevented by sickness or unavoidable accident, under the penalty of forfeiting a named sum to the party at whose instance he was summoned, and of becoming subject to fine and imprisonment. He appeared before a notary public in obedience to such summons and proceeded to give his deposition, and while in the office of an attorney for the purpose of completing his

testimony, he was arrested under a warrant issued by a justice of the peace and based upon the affidavit of one of the parties to the contested election case charging him with willful perjury committed in his deposition. Having been arrested under that warrant, he sued out a writ of habeas corpus from the circuit court of the United States upon the ground that he was restrained of his liberty in violation of the constitution of the United States. That court, in advance of any trial in the state court for the offense charged against him, adjudged that the offense was punishable only under the laws of the United States and was exclusively cognizable by the courts of the United States. He was discharged, and the judgment was affirmed by the federal supreme court. It is clear from this statement that the case was one of urgency, involving in a substantial sense the authority and operations of the general government. In re Loney, 134 U. S. 372, 375, 33 L. Ed. 949.

But an erroneous decision of a state court, out on a motion to quash an indictment, on the ground that negroes were excluded therefrom, does not justify federal interference. In re Wood, 140 U. S 278, 287, 35 L. Ed. 505. The surrender of the petitioner by his bail at his request and his consequent imprisonment furnishes in itself no ground of urgency for the interference of a federal court. The imprisonment is entirely voluntary, and while the surrender by his bondsmen may be good for the purpose of avoiding any technical objection to the issuing of the writ founded upon the fact that the petitioner was on bail, yet the fact of imprisonment under such circumstances adds nothing to the strength of his case as calling for the interposition of the federal court. Baker *v.* Grice, 169 U. S. 284, 293, 42 L. Ed. 748.

It is often an embarrassing question to determine in a particular case whether or not circumstances require immediate action. Ex parte Royall, No. 1, 117 U. S. 241, 250, 29 L. Ed. 868. And in such cases of doubt it is certainly the better practice to put the prisoner to his remedy by writ of error from this court, under § 709 of the Revised Statutes, than to award him a writ of habeas corpus. For, under proceedings by writ of error, the validity of the judgment against him can be called

in question, and the federal court left in a position to correct the wrong, if any, done the petitioner, and at the same time leave the state authorities in a position to deal with him thereafter within the limits of proper authority, instead of discharging him by habeas corpus proceedings, and thereby depriving the state of the opportunity of asserting further jurisdiction over his person in respect to the crime with which he is charged. In re Frederich, 149 U. S. 70, 77, 37 L. Ed. 653.

After Exhaustion of Remedies in State Courts.—When the state courts have finally acted upon the case, the federal courts have still a discretion whether, under all the circumstances then existing, the accused, if convicted, shall be put to his writ of error from the highest court of the state, or whether it will proceed, by writ of habeas corpus, summarily to determine whether the petitioner is restrained of his liberty in violation of the constitution of the United States; for, if the applicant felt that the decision, whether upon writ of error or upon habeas corpus, in the supreme court of the state, was in violation of his rights under the constitution or laws of the United States, he could have brought the case by writ of error directly from that court to the federal supreme court. New York *v.* Eno, 155 U. S. 89, 95, 39 L. Ed. 80; Ex parte Royall, No. 1, 117 U. S. 241, 251, 252, 29 L. Ed. 868; Urquhart *v.* Brown, 205 U. S. 179, 182, 51 L. Ed. 760. The federal courts will generally leave the petitioner to his remedy by writ of error from the federal supreme court, except in peculiar and urgent cases. Baker *v.* Grice, 169 U. S. 284, 290, 42 L. Ed. 748. Of course, the discretion here referred to is a legal discretion to be controlled in its exercise by such principles as are applicable to the particular case in hand. New York *v.* Eno, 155 U. S. 89, 95, 39 L. Ed. 80.

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